

1 James R. Condo (#005867)
2 Kristine L. Gallardo (#033975)
3 SNELL & WILMER L.L.P.
4 One Arizona Center
5 400 E. Van Buren, Suite 1900
Phoenix, AZ 85004-2204
Telephone: (602) 382-6000
jcondo@swlaw.com
kgallardo@swlaw.com

6 Richard B. North, Jr. (admitted *pro hac vice*)
7 Georgia Bar No. 545599
Matthew B. Lerner (admitted *pro hac vice*)
8 Georgia Bar No. 446986
NELSON MULLINS RILEY & SCARBOROUGH LLP
9 Atlantic Station
10 201 17th Street, NW, Suite 1700
Atlanta, GA 30363
Telephone: (404) 322-6000
richard.north@nelsonmullins.com
matthew.lerner@nelsonmullins.com

11 *Attorneys for Defendants*
12 *C. R. Bard, Inc. and*
Bard Peripheral Vascular, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

16 IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
EXHIBITS IN SUPPORT OF
BARD'S REPLY TO MOTION TO
EXCLUDE PORTIONS OF DR.
MUEHRCKE'S *TINLIN REPORT***

21 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
22 “Bard”) hereby respectfully move this Court, pursuant to the Stipulated Protective Order
23 (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
24 leave to file under seal the exhibits attached in support of Bard’s Reply to its Motion to
25 Exclude the Certain Portions of Dr. Muehrcke’s *Tinlin* Report served on December 7,
26 2018. The exhibits to the Reply contain certain trade secrets and confidential information
27 that are protected under the Stipulated Protective Order, warranting protection from public
28 disclosure. Accordingly, there is good cause to grant Defendants’ Motion for Leave to

1 File Under Seal the Exhibits in Support of Bard's Reply to the Motion. Plaintiffs have
 2 agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not yet
 3 responded to Defendants' attempt to meet and confer on whether Plaintiffs oppose this
 4 Motion. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

5 **ARGUMENT AND CITATION OF AUTHORITY**

6 "When a court grants a protective order for information produced during discovery,
 7 it already has determined that 'good cause' exists to protect this information from being
 8 disclosed to the public by balancing the needs for discovery against the need for
 9 confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
 10 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-
 11 1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits
 12 related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails
 13 and deposition transcripts, viscosity test data, sales and marketing information, and
 14 various other documents" because "[m]uch of this information has been previously sealed
 15 by the Court, has been designated as confidential by the parties pursuant to the protective
 16 order in this case, or could otherwise potentially harm the parties if released publicly
 17 because of its confidential and sensitive nature.").

18 The exhibits to Bard's Reply contain and recite pieces of highly competitive,
 19 confidential, proprietary information that warrant protection under Federal Rule of Civil
 20 Procedure 26(c)(1)(G) because the documents are not made public by Bard and, if
 21 obtained by Bard's competitors, could give an unfair economic advantage to those
 22 competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL
 23 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d
 24 772, 786 (3d Cir. 1994)). The Exhibits cite and extensively quote dozens of confidential
 25 Bard documents, including technical and design files, testing documents, internal adverse
 26 event investigations and analysis, design and risk management documents, and numerous
 27 internal e-mails between high-level Bard employees. The Reports quote so extensively
 28 from confidential documents that filing the Reports is akin to filing the documents

1 themselves. Except for a small number of publicly available documents, all of the Bard
 2 documents cited in the Reports were produced to Plaintiffs as “Confidential – Subject to
 3 Protective Order” on each page pursuant to Stipulated Protective Order (Doc. 269) ¶ 6.

4 The public disclosure of these exhibits would reveal confidential, proprietary and
 5 trade secret information and would create a heightened risk of irreparable harm to Bard’s
 6 competitive business concerns. Further, its inclusion in the public record would not only
 7 harm Bard because of the trade secrets and confidential information it contains, but it
 8 would also eviscerate the significant time and resources Bard has expended in protecting
 9 its business information.

10 Accordingly, good cause exists for sealing the Exhibits at issue.

11 RESPECTFULLY SUBMITTED this 25th day of January, 2019.

12 s/Richard B. North, Jr.

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17 NELSON MULLINS RILEY & SCARBOROUGH, LLP

18 Atlantic Station

201 17th Street, NW / Suite 1700

19 Atlanta, GA 30363

20 PH: (404) 322-6000

21 FX: (404) 322-6050

22 richard.north@nelsonmullins.com

23 matthew.lerner@nelsonmullins.com

24 James R. Condo (#005867)

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26 SNELL & WILMER L.L.P.

27 One Arizona Center

28 400 E. Van Buren

29 Phoenix, AZ 85004-2204

30 PH: (602) 382-6000

31 JCondo@swlaw.com

32 KGallardo@swlaw.com

33 **Attorneys for Defendants C. R. Bard, Inc. and**
Bard Peripheral Vascular, Inc.

EXHIBIT A

DOCUMENTS PROPOSED TO BE FILED UNDER SEAL

Defendants request they be permitted to file under seal the following documents:

1. Exhibit A to reply to motion to exclude Dr. Muehrcke – Comparison Chart of language from Dr. Muehrcke’s Report versus Drs. Kinney, Roberts & Kalva’s Report
2. Exhibit B to reply to motion to exclude Dr. Muehrcke – Drs. Kinney, Roberts & Kalva’s Report